

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

**SIERRA CLUB,
Plaintiff,**

v.

**ENERGY FUTURE HOLDINGS
CORPORATION and LUMINANT
GENERATION COMPANY LLC.,
Defendants.**

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Civil Action No. W-12-CV-108

ORDER


Before the Court is Plaintiff's Motion for Partial Summary Judgment. Defendants in this case argue that they may assert affirmative defenses under 30 Texas Administrative Code § 101.222(a)-(g). Plaintiff argues these affirmative defenses are not available to Defendants because the Environmental Protection Agency did not approve them until January 11, 2011. The Court does not believe the current briefing sufficiently addresses:

- (1) Whether the EPA needed to "backdate" its rule, which adopted the affirmative defenses in § 101.222(a)-(g), to 2006 for those affirmative defenses to be applicable for violations that occurred before their adoption;
- (2) Whether the affirmative defenses in § 101.222(a)-(g) are, in fact, "backdated" to 2006.

ORDERED that both parties shall submit their positions on these issues within fourteen (14) days of entry of this order. It is further

ORDERED that both parties shall have leave of Court to file a response to the other party's brief within seven (7) days after the brief has been filed.

SIGNED this 27th day of June, 2013.



WALTER S. SMITH, JR.
UNITED STATES DISTRICT JUDGE